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Nos. 91-1179, 91-1346

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

THE PUEBLO OF SANTO DOMINGO,
Petitioner in No. 91-1179,

and

THE UNITED STATES OF AMERICA,
Petitioner in No. 91-1346,

v.

LELAND THOMPSON, JR., *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

CONSOLIDATED BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether section 4 of the Pueblo Lands Act, as amended, precludes the United States and the Pueblo of Santo Domingo from claiming the land at issue in this action, when the Pueblo Lands Board, comprised of representatives of the President, the Attorney General, and the Secretary of the Interior, determined in 1927 that the Pueblo's title to the land was extinguished, and neither the United States nor the Pueblo challenged the Board's action in any forum prior to the filing of this action in 1984?

LIST OF PARTIES TO THE PROCEEDING

Jean Jacques Alexandre, Nathalie Alexandre, Rick E. Allen, Lynn K. Allen, Thomas L. Andrews, Edmund Ball, Virginia Ball, BMP Development Company, Lynne Bundesen, Yolanda M. Carbajal, Estate of Ernest Cummins, Barbara L. Cummins, Cedar Ridge Joint Venture, Charter Bank for Savings, F.S.B. (successor to DeVargas Savings & Loan Bank), Valgene Ebeling, Galisteo Acres Joint Venture, Roger Greenwald, Karl Kernberger, Samuel J. Lemly, OKC Joint Venture, Paper Seventy, Pan Western Life Insurance Company, Robert Taylor, and Mamie Taylor.

The Atchison, Topeka and Santa Fe Railway Company, Cherokee and Pittsburg Coal and Mining Company, Santa Fe Pacific Mining, Inc., Marian Noelke Atcheson, Hal E. Noelke, and PBC Associates.

Public Service Company of New Mexico, Gas Company of New Mexico, and Buena Vista Estates, Inc.

Leland Thompson, Jr., La Bajada Ranch, Los Atrevidos, Caroline Thompson, Julie C. Thompson, Leland C. Thompson, and Warren A. Thompson.

Senator Jeff Bingaman, Anne K. Bingaman, Alice Catron, Thomas B. Catron, III, John S. Catron, Thomas B. Catron, III, Trustee, and Norman K. Toerge.

Sandia Preparatory School.

Sam E. Brown, Billy K. Brown, Jerry J. Brown and Mesita Village, Inc.

Plains Electric Generation and Transmission Cooperative, Inc.

New Mexico State Highway and Transportation Department.

Mary Huber Duncan, Kathryn Collister and the Albuquerque Cerrillos & Coal Company.

George Z. Westrick, Westridge Investments, David H. Orrin, Sr., Bobbie A. Orrin, Eagle Valley Co., Gwendolyn Mauldin, Jemez Corridor, Inc., East Mountain Financial Corporation, Golden Triangle Ranch Corp., James A. Mauldin, Edward M. Fallen, James E. Kirk, LaTierra Buena Corp., LaBolsa Partnership and Golden Triangle Properties.

Marian Silver, Gene Petchecky and Pauline Pollock.

The Pueblo of Santo Domingo.

The United States of America.

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CONSOLIDATED BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court was entered on February 2, 1989 and is reported at 708 F. Supp. 1206. The opinion of the Court of Appeals was entered on August 12, 1991 and is reported at 941 F.2d 1074. The Court of Appeals denied rehearing on October 21, 1991.

STATEMENT

The United States and the Pueblo of Santo Domingo, plaintiffs and appellants below, filed separate petitions for a writ of certiorari seeking review of a decision by the United States Court of Appeals for the Tenth Cir-

cuit affirming a final judgment in favor of respondents.[1] This action was brought in the United States District Court for the District of New Mexico on March 9, 1984 by the United States in its own behalf and on behalf of the Pueblo to eject approximately 200 defendants from roughly 24,000 acres of land located between Albuquerque and Santa Fe in New Mexico.[2] The Pueblo then intervened as a plaintiff, also asserting a right to ejectment as well as trespass damages. Respondents claim title to and currently occupy the land.

The Pueblo traces its alleged title to the disputed land to a grant purportedly made to the Pueblo by the Spanish governor of New Mexico in 1689. This grant was confirmed by Congress in 1858, surveyed by United States Deputy Surveyor Clements in 1859, and patented in 1864.[3]

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[1] Respondents joining in this brief in opposition were granted an extension of time to and including March 18, 1992, for filing a brief in opposition in No. 91-1179, in order to permit them to file a consolidated brief in opposition to both petitions for certiorari. Respondents refer the Court to their application for extension of time, filed on February 6, 1992 in No. 91-1179, for the list of companies required by Rule 29.1.

[2] The Pueblo asserts that the land at issue in this case is "virtually uninhabited scrub land," apparently to imply that the land is of little value to respondents, and consequently that an order ejecting respondents from the land would be of little consequence. *See* Pueblo Pet. at 2. As the pleadings in this case show, respondents include homeowners, ranchers, investors, gas and electric utility companies, the New Mexico state highway department, and The Atchison, Topeka and Santa Fe Railway, all of whom occupy, possess and use the land at issue in connection with their various activities. *See, e.g.*, Amended Complaint ¶ 12, Alexandre Answer to Amended Complaint ¶¶ 11, 13, 29; Public Service Co. of New Mexico Answer to Amended Complaint ¶ 9; Thompson Answer to Complaint ¶¶ 8, 10. Respondents regard the land at issue as valuable property, and do not regard the prospect of being ejected from land that they have possessed for years as inconsequential.

[3] Act of December 22, 1858, ch. 5, 11 Stat. 374; Patent dated November 1, 1864, 3 Gov't C.A. App., Tab C-3. The United States asserts that respondents "conceded" that the Pueblo's purported 1689 grant is prior in time to the 1782 grant upon which respond-

Respondents trace their titles to a Spanish grant made in 1782 known as the Mesita de Juana Lopez grant. In 1872, the Surveyor General of New Mexico recommended congressional confirmation of the Mesita de Juana Lopez grant, stating "I have no doubt of the genuiness [sic] of [the] original papers nor of the honesty and good faith of the parties asking this confirmation." Report No. 64 of the Surveyor General of New Mexico (Nov. 29, 1872), 3 Gov't C.A. App., Tab. D-1. In 1876, United States Deputy Surveyor Reeves surveyed the Mesita de Juana Lopez grant. The survey showed the grant to contain 42,022.85 acres, and was approved by the Surveyor General for New Mexico on February 28, 1877. In 1879, Congress confirmed the Mesita de Juana Lopez grant, specifically recognizing the Reeves survey and its approval by the Surveyor General. Act of January 28, 1879, ch. 31, 20 Stat. 592.

The Reeves survey of the Mesita de Juana Lopez grant overlapped the Clements survey of the Pueblo grant by approximately 4,000 acres. In 1907, the United States resurveyed the Pueblo grant. The 1907 resurvey, con-

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ents base their titles. *See* U.S. Pet. at 10. While respondents do agree that 1689 is prior in time to 1782, respondents do not concede the superiority of the Pueblo's grant. Indeed, respondents allege, as many historians have concluded, that the purported 1689 document granting land to the Pueblo is a forgery dating from the mid-nineteenth century. *See* Affidavit of Dr. Stanley M. Hordes, Exhibits to Joint Memorandum of Defendants in Opposition to Plaintiffs' Cross-Motion for Summary Judgment, Tab H-16 (citing publications by historians regarding 1689 grants). If respondents' allegation is correct, then the Pueblo's prior title in relation to respondents may be limited to the "four square leagues" of land (approximately 17,700 acres) awarded to pueblos by operation of Spanish law, *see* F. Cohen, Handbook of Federal Indian Law 383 (1942 ed.), rather than the 92,000 acres that the Pueblo currently claims under its 1689 grant. If the Pueblo's prior title in relation to respondents is limited to four square leagues, then the Pueblo's prior grant does not overlap respondents' grant. Because the courts below ruled in favor of respondents on the basis of the Pueblo Lands Act, they did not reach the questions raised by the spuriousness of the Pueblo's 1689 grant.

ducted by United States Deputy Surveyor Hall, extended the Pueblo's eastern boundary more than four miles east of the 1859 Clements boundary line, increasing the overlap with the Reeves survey to approximately 24,000 acres. These 24,000 acres of land, included in both the Hall resurvey of the Pueblo of Santo Domingo and the Reeves survey of the Mesita de Juana Lopez grant, constitute the overlap land claimed by petitioners in this action.

Respondents moved for summary judgment in the district court on several grounds. The district court granted respondents' motion on the ground that the Pueblo Lands Act barred the plaintiffs from asserting their claim. The district court did not address the other arguments raised by respondents in support of their motion for summary judgment.[4] On appeal, the United States Court of Appeals for the Tenth Circuit affirmed the district court's ruling, holding that plaintiffs' action was barred by the Pueblo Lands Act.

A. The Pueblo Lands Act of 1924.

A thorough understanding of the Pueblo Lands Act of June 7, 1924, ch. 331, 43 Stat. 636, is crucial to an evaluation of the decision below. From 1848, when New Mexico became part of the United States, until 1913, this Court, as well as lower courts, held that federal laws generally applicable to Indians—including laws regulat-

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[4] In addition to moving for summary judgment on the basis of the Pueblo Lands Act, respondents moved for summary judgment on the grounds that (1) the plaintiffs' claim was barred by the bona fide purchaser doctrine, (2) the Indian Claims Commission Act provided the exclusive remedy for plaintiffs' claim, and (3) the plaintiffs could not claim land that lay outside the boundaries of the Pueblo grant as determined by the survey that accompanied the patent. Also, respondents assert, *inter alia*, that plaintiffs' claim is barred by the federal law of laches and by the 1817 adjudication of the Pueblo's boundaries issued by the Spanish Real Audencia in Guadalajara. *See Pueblo of Santa Ana v. Baca*, 844 F.2d 708, 711-12 (10th Cir. 1988) (affirming district court's decision upholding title based on 1813 adjudication by Spanish Real Audencia). Because the courts below ruled for respondents based on the Pueblo Lands Act, none of these contentions was addressed by the courts below.

ing Indian land transfers—did not apply to the pueblos of New Mexico because of the pueblos' relatively advanced development and because of the status of the pueblos under Mexican law. Relying on these court decisions, residents of New Mexico routinely acquired pueblo land without seeking federal approval. *See Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240-42 (1985). In 1913 this Court reversed its prior view and indicated that federal Indian law applied to the pueblos. *See United States v. Sandoval*, 231 U.S. 28, 38 (1913). To remedy the uncertainty regarding the validity of non-Indian land titles created by the *Sandoval* decision, Congress enacted the Pueblo Lands Act of 1924, which established a procedure for resolving title disputes involving land claimed by pueblos.

The Act created the Pueblo Lands Board, consisting of the Secretary of the Interior, the Attorney General, and a third member appointed by the President. Section 2 of the Act directed the Board to "investigate, determine, and report and set forth by metes and bounds . . . the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico . . . or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act . . . ." Act of June 7, 1924, ch. 331, § 2, 43 Stat. at 636; *see Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 244 (1985).

Once the Board made its report with respect to a particular pueblo, section 3 of the Act provided that:

> the Attorney General shall forthwith cause to be filed in the United States District Court for the District of New Mexico, as provided in section 1 of this Act, a suit to quiet title to the lands described in said report as Indian lands the Indian title to which is determined by said report not to have been extinguished.

Id. § 3, 43 Stat. at 636-67. Section 4 of the Act provided that "[n]othing in this Act contained shall be con-

strued to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any land by original proceedings, either in law or equity, in any court of competent jurisdiction . . . at any time prior to the filing of the field notes and plats as provided in section 13 hereof . . . ." *Id.* § 4(b), 43 Stat. at 637. Section 14 of the Act provided that if the district court in the section 3 action concluded that a non-Indian claimant had established title superior to a pueblo's title based on a Spanish or Mexican grant, the court should not eject the pueblo from possession of the land, but instead should determine the value of the non-Indian interest. The Secretary of the Interior was then to report the court's determination to Congress, presumably so that Congress could purchase the non-Indian interest.

1. *The Pueblo Lands Board determined that the Pueblo's title to the land at issue was extinguished.*

As directed by the Pueblo Lands Act, the Pueblo Lands Board investigated land claims involving the Pueblo of Santo Domingo, and on December 29, 1927, filed its report pursuant to section 2 of the Pueblo Lands Act.[5] The report specifically excluded the Mesita de Juana Lopez grant from the land that the Board found to be Indian land. The report stated:

> Said Board, having investigated the lands within the exterior boundaries of the land lying in the counties of Sandoval (formerly Bernalillo) and Santa Fe, State of New Mexico, confirmed to the Pueblo of Santo Domingo as shown on blue print map hereto attached and marked "Exhibit A," being a Spanish Grant as confirmed by Act of Congress approved December 22, 1858, and patented November 1, 1864, the exterior boundaries of said grant having been corrected by a resurvey made in 1907, has deter-

[5] Pueblo Lands Board, Santo Domingo Pueblo, Report on Title to Lands Granted or Confirmed to Pueblo Indians Not Extinguished (December 29, 1927), 4 Gov't C.A. App., Tab E-1 (hereafter cited as "Lands Board Section 2 Report").

> mined, and hereby determines, that title thereto in said Pueblo has not been extinguished in accordance with the provisions of said Act of June 7, 1924, as to the lands described and set forth by metes and bounds as follows, except certain tracts marked "Exceptions 1 to 36," inclusive, and indicated on blue print map hereto attached and marked "Exhibit B", and *except the lands over-lapped by the La Majada, Sitio de Juana Lopez and Mesita de Juana Lopez grants shown on blue print map hereto attached and marked "Exhibit A"* . . . .

Lands Board Section 2 Report at 1-2 (emphasis added).

The blue print map marked "Exhibit A" showed the boundaries of the Pueblo. In the lower corner of the map the Board wrote in bold letters with red pencil: "Note: red line indicates exterior boundaries as confirmed by Board." A thick red pencil line was drawn around the exterior boundaries of the Pueblo grant on three sides, but on the east the line stopped at the intersection of the Pueblo grant and the Mesita de Juana Lopez grant. At that point, the red pencil line continued along the western boundary of the Mesita de Juana Lopez grant, showing the eastern boundary of the Pueblo to be coterminous with the western boundary of the Mesita de Juana Lopez grant. 4 Gov't C.A. App., Tab E-13.

Herbert J. Hagerman, the Secretary of the Interior's representative on the Board, sent copies of the Board's section 2 report to the Secretary of the Interior together with a transmittal letter that described the report. Hagerman explained the Board's determination that the Pueblo had no right to the land claimed by plaintiffs in this suit:

> The [Pueblo's] grant was confirmed by Congress on December 22, 1858, and patented on November 1, 1864. There was a resurvey in 1907, made upon the suggestion of the then representative of the Northern Pueblos, which resurvey, we understand, was accepted by the General Land Office. The resurvey included 37,971.45 acres in conflict with the Mesita de Juana Lopez grant, and 4,592.61 acres in conflict

> with the La Majada grant. *The Board, after full investigation, found that the Indians are not entitled to the areas included in these conflicts, and so report.*

Letter from Herbert J. Hagerman to the Secretary of the Interior, dated December 27, 1927 (emphasis added), 4 Gov't C.A. App., Tab E-5.[6]

2. *The United States did not claim the land at issue in the quiet title suit filed pursuant to section 3 of the Act.*

On February 1, 1928, the United States filed the suit required by section 3 of the Pueblo Lands Act to quiet title to the land that the Board had found remained in the Pueblo of Santo Domingo. This action was styled *United States v. Montoya*. The United States clearly recognized that the Board ruled against the Pueblo's claim to the land at issue in this action when it filed the quiet title suit on behalf of the Pueblo required by section 3 of the Pueblo Lands Act. Complaint, *United States v. Montoya*, No. 1830 In Equity (D.N.M. 1928), 4 Gov't C.A. App., Tab E-6. In paragraph 5 of the complaint in *Montoya*, the United States asserted that the "Pueblo Lands Board . . . has determined that the Indian title to certain portions [of the Santo Domingo grant] now vests in various owners other than said Pueblo" and then listed the "portions of said Santo Domingo Grant overlapped by . . . the Mesita de Juana Lopez grant" as among the land vested in other owners. Paragraph 5 also stated that "said grant conflicts [*i.e.*, the alleged overlap between the Pueblo grant and the La Majada grant, the Sitio de Juana Lopez grant, and the Mesita de Juana Lopez grant] are not involved in this suit and no relief is here asked as to the

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[6] In its petition the United States comments that the Board "did not find that overlap claimants attained adverse possession," U.S. Pet. at 17 n.12, implying that the Board did make such findings with respect to other claimants. In fact, the Board did not enter such "findings" with respect to any claimant, *see* Lands Board Section 2 Report, nor did the Board routinely explain the basis for its determinations.

land included therein." [7] On April 25, 1929, the District Court entered its final decree in *Montoya*. *United States v. Montoya*, No. 1830 in Equity (D.N.M. April 25, 1929) (final decree), 4 Gov't C.A. App., Tab E-7. Since the complaint had specifically described the land claimed for the Pueblo as excluding the land at issue in this suit, the land at issue was not part of the land that the court confirmed to the Pueblo.

B. The 1933 Amendments to the Pueblo Lands Act.

Because the pueblos were dissatisfied with the amount of compensation awarded to them by the Pueblo Lands Board, in 1933 Congress provided additional compensation to the Pueblos. Act of May 31, 1933, ch. 45, 48 Stat. 108 (the "1933 Act"). Section 6 of the 1933 Act provided that each pueblo could elect either to waive any proceedings under section 4 of the 1924 Act to establish its title to land and accept the additional compensation provided by the 1933 Act, or to pursue an action under section 4, provided that the action were filed within one year after enactment of the 1933 Act. On November 7, 1933, the Pueblo of Santo Domingo executed the agreement provided for in section 6 of the 1933 Amendments to the Pueblo Lands Act, and thereby surrendered its right to bring any future actions under section 4 of the Pueblo Lands Act. 3 Gov't C.A. App., Tab B-2. In any event, the Pueblo did not file any action to establish its title to the land at issue in this case prior to one year after enactment of the 1933 Act. Neither the United States nor the Pueblo filed any action asserting a claim to the land at issue in this case from the time the Pueblo Lands Board issued its report in 1927 until the filing of this action in 1984.

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[7] The *Montoya* complaint contained several other statements making it clear that the United States did not claim the land overlapped by the Mesita de Juana Lopez grant. *See* Paragraphs 6, 7, and 8, Complaint, *United States v. Montoya*, No. 1830 In Equity (D.N.M. 1928), 4 Gov't C.A. App., Tab E-6.

SUMMARY OF ARGUMENT

None of the considerations that are set out in Rule 10 of the Court's rules as justifying a grant of certiorari is present in this case. In particular, there is no conflict between the decision below and applicable decisions of this Court. The decision below is consistent with the general rule that the United States is not bound by statutes of limitations unless Congress clearly manifested its intention that the United States be bound, and with cases holding that the United States sues its own right when it sues on behalf of Indian tribes. Nor does the decision below present a question of federal law deserving the Court's attention. The issue presented by this case is narrow and unlikely to recur. Finally, there is no substantial public interest favoring review. Therefore, the petitions for a writ of certiorari should be denied.

ARGUMENT

I. THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND APPLICABLE DECISIONS OF THIS COURT.

A. The Decision Below Is Consistent With the General Rule that the United States Is Not Bound By Statutes of Limitations Unless Congress Clearly Manifested Its Intention that the United States Be Bound.

Petitioners assert that the decision below conflicts with decisions of this Court standing for the proposition that "the United States, asserting rights vested in it as a sovereign government, is not bound by any statute of limitations, unless Congress has clearly manifested its intention that it should be so bound." *E.g.*, *United States v. Nashville Railway*, 118 U.S. 120, 125 (1886); *United States v. Insley*, 130 U.S. 263, 266 (1889); *see* Pueblo Pet. at 11; U.S. Pet. at 11 & n.9. In fact, there is no such conflict, because the court of appeals below was faithful to this principle. The court of appeals cited *Nashville Railway* as the governing standard, 941 F.2d at

1080-81, U.S. Pet. App. 16a, but determined, after carefully analyzing the Act, that Congress did "manifest its intention" that the United States, as well as the Pueblo, be precluded from asserting the type of claim raised in this case. "Congress intended the federal government, *in a case like this*, to be subject to the same statute of repose that operates against the Pueblo." 941 F.2d at 1081, U.S. Pet. App. 16a (emphasis added). While the petitioners dispute this conclusion regarding Congress's intent, that is not a sufficient reason for this Court to grant certiorari.

The court below applied the proper techniques of statutory construction when it determined that Congress intended the United States as well as the Pueblo to be bound by the statute of limitations in section 4. This Court has directed that: "In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole, and to its object and policy." *Crandon v. United States*, 494 U.S. 152 (1990); *accord Massachusetts v. Morash*, 490 U.S. 107, 114-15 (1989); *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 51 (1987); *see Sullivan v. Everhart*, 494 U.S. 83 (1990) (challenge to agency interpretation) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (same). This Court has repeatedly emphasized the need to consider a statute's object and policy in order to determine congressional intent:

> Of course, the "starting point in every case involving construction of a statute is the language itself." [Citation omitted.] But the text is only the starting point. As Justice O'Connor explained last term, "'"In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."'" Offshore Logistics Inc. v. Tallentire, 477 U.S. 207, 222 (1986) (quoting Mastro

> Plastics Corp. v. NLRB, 350 U.S. 270, 285, (1956) (in turn quoting United States v. Heirs of Boisdore, 8 How. 113, 122 (1849))).

Kelly v. Robinson, 479 U.S. 36, 43 (1986); *accord*, *Dole v. United Steelworkers of America*, 494 U.S. 26 (1990).

That is precisely the analysis followed by the court below. Respondents' brief in opposition is not the proper place to review all of the authority that supports the judgment of the court below that the United States and the Pueblo are barred from bringing this action. The briefs filed below extensively discussed the relevant provisions of the Act, its legislative history, and the contemporaneous interpretations of the officials charged with administering the Act. It is apparent from the court's opinion that the court below carefully reviewed these materials in reaching its holding. In doing so, the court below faithfully applied the precedents of this Court to determine Congress's intent.

For example, the court below recognized that the object of the Act was to resolve the complicated title questions that had arisen with respect to pueblo land in New Mexico. 941 F.2d at 1078-79, U.S. Pet. App. 9a-10a; *see, e.g.*, *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240 (1985). This object was repeatedly emphasized in legislative committee reports, hearings, floor debates, and in the Act itself. For example, House Report No. 1730, 67th Cong., 4th Sess. 1 (1923) stated that the purpose of the Pueblo Lands Act was "to ascertain and settle the title to lands and waters in New Mexico belonging to the Pueblo Indians" and to provide "an exclusive forum wherein all controversies as to the rights of the Pueblo Indians may be adjudicated." Senate Report No. 492, 68th Cong., 1st Sess. 3 (1924), stated: "This bill is an effort to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed

by the Pueblo Indians of New Mexico." [8] The court below considered these materials extensively in construing the relevant sections of the Act. *See* 941 F.2d at 1078-79, U.S. Pet. App. 9a-11a.

The court of appeals also carefully considered the structure of the Act. The Act established an elaborate structure for ascertaining the ownership of land claimed by both non-Indians and pueblos in order to accomplish the congressional objective to resolve the titles to such land. As described in the Statement above, the Act created the Pueblo Lands Board, consisting of the Secretary of the Interior, the Attorney General, and a third member appointed by the President, and directed the Board to determine whether a pueblo's title to land within its grant had been extinguished. Act of June 7, 1924, ch. 331, § 2, 43 Stat. at 636; *see Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 244 (1985). Any decision by the Board holding that pueblo title to land was extinguished had to be unanimous. Act of June 7, 1924, ch. 331, § 2, 43 Stat. at 636-67. Under the procedure established by the Act, once the Board determined that a pueblo's title to a particular parcel of land had been extinguished, that was the end of the matter unless the pueblo elected to negate the Board's determination by filing an independent action as provided in section 4 of the Act.[9] If the Board determined that a pueblo's title

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[8] *Accord* H.R. Rep. No. 787, 68th Cong., 1st Sess. 4 (1924); S. Rep. No. 492, 68th Cong., 1st Sess. 5 (1924); S. Rep. No. 1175, 67th Cong., 4th Sess. 3 (1923); H.R. Rep. No. 1748, 67th Cong., 4th Sess. (1923); H.R. Rep. No. 1730, 67th Cong., 4th Sess. 6 (1923).

[9] This view of section 4 was the view held by the Secretary of the Interior at the time of the Pueblo Lands Board's deliberations. The Secretary of the Interior explained the operation of section 4 in a letter to the Chairman of the Senate Committee on Indian Affairs. The letter stated:

> A board called the Pueblo Lands Board was created by the act, charged with the administration of the fundamental parts of the act. *Its findings with respect to title, if adverse to the*

to a particular parcel of land had not been extinguished, then the Act directed the United States to sue to quiet the pueblo's title to the land as provided by section 3 of the Act. Non-Indian claimants whose claims had been rejected by the Board could reassert their claims in the quiet title action. Ultimately, of course, the district court would rule either in favor of the pueblo or the non-Indian claimant with respect to all of the land involved in the section 3 quiet title suit. *See* Act of June 7, 1924, ch. 331, §§ 2, 3, 43 Stat. at 636.

The interaction between sections 2 and 3 of the Act ensured that title to all of the land located within the exterior boundaries of a pueblo grant would be confirmed in either the pueblo or a non-Indian landholder. There was no provision in the Act for title to land within the

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> *Pueblos, would become irrevocable in the event that the Pueblos elected not to make use of an authority, conveyed by the act, to institute independent suits*, unaffected by the terms or limitations of the act, which suits would be equivalent to a rejection by the Pueblos of such of the findings by the Board, respecting title or eligibility thereto, as might be brought into contest through such independent suits.

S. Rep. No. 73, 73d Cong., 1st Sess. 15 (1933) (emphasis added) (Letter from the Secretary of the Interior to the Chairman of the Senate Committee on Indian Affairs, expressly incorporated by the Senate Committee in its report). In its previous consideration of the Pueblo Lands Act, this Court noted that the "uniform contemporaneous view of the Executive Officer responsible for administering the statute . . . is entitled to very great respect. These individuals were far more likely to have had an understanding of the actual intent of Congress than judges who must consider the legal implications of the transaction over half a century after it occurred." *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 254-55 (1985); *see Andrus v. Shell Oil Co.*, 446 U.S. 657, 667-68 (1980) (deferring to the "contemporaneous construction of the statute by the men charged with the responsibility of setting its machinery in motion."). Such deference is especially important when grantees and third parties have relied on the administrative interpretations in connection with titles to real property. *See McLaren v. Fleischer*, 256 U.S. 477, 480-81 (1921); *United States v. The Burlington & Missouri River Railroad Co.*, 98 U.S. 334, 341 (1879).

exterior boundaries of pueblo grants to remain unresolved. Either the Board reported the pueblo title as extinguished and confirmed the land in the non-Indian landholder, or the Board determined that the pueblo title was not extinguished, in which case the land became the subject of a section 3 quiet title action.[10] The Act did not provide a third option that would somehow permit the Board to determine that a pueblo's title was not extinguished but would also permit the United States to refrain from including the land in the quiet title action mandated by section 3 of the Act. The court of appeals below properly reviewed and relied on this structure to determine Congress's intent.

The court below also relied on Congress's reaffirmation of its purpose to resolve the titles to land claimed by both non-Indians and pueblos expressed in the 1933 amendments to the Pueblo Lands Act. As the court below concluded, "[i]f we had any doubt concerning applying a limitations period to the Pueblo, it was erased by the subsequent amendment of the PLA." 941 F.2d at 1079, U.S. Pet. App. at 11a. The 1933 amendments to the Pueblo Lands Act modified the period provided in section 4 for a pueblo to bring an action in federal district court to assert claims to land. Originally, section 4 limited such claims by requiring that they be asserted "at any time prior to the filing of the field notes and plats as provided in section 13" of the Act. In the 1933 Act, Congress amended section 4 of the Act to change the limitations period from the period prior to the filing of the section 13 plats to one year after the enactment of the 1933 Act. Act of May 31, 1933, ch. 45, § 6, 48 Stat. 108, 110-11.

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[10] The United States is being disingenuous when it states that the Board "merely declined to confirm" the Pueblo's title. *See* U.S. Pet. at 18. The Act did not give the Board the option of "merely declining to confirm," and the Board's report and accompanying materials described in the Statement above show that the Board expressly determined that the Pueblo's title to the overlap land was extinguished. *See* p. 6, *supra*.

The 1933 Act demonstrated yet again that Congress intended to limit the time for asserting pueblo land claims. Section 6 of the 1933 Act provided that a pueblo

> may elect to accept the appropriations herein authorized, in the sums herein set forth, in full discharge of all claims to compensation under the terms of said Act, notifying the Secretary of the Interior in writing of its election so to do: *Provided*, That if said election by said pueblo be not made, said pueblo shall have one year from the date of the approval of this Act within which to file any independent suit authorized under section 4 of the Act of June 7, 1924, at the expiration of which period the right to file such suit shall expire by limitation . . . .

Id. The purpose of section 6 was explained as follows:

> Section 6 provides for election by the Pueblos as to whether they will accept the amended compensation totals as in final settlement, or will reject the settlement through independent suits. If no election be made within 1 year after approval of the act, the right to file such independent suits shall expire by limitation. *Thus, litigations and pending and potential litigations, affecting the ownership of these Pueblo lands, will be forever ended.*

S. Rep. No. 73, 73d Cong., 1st Sess. 17 (1933) (Letter from the Secretary of the Interior to the Chairman of the Senate Committee on Indian Affairs, expressly incorporated by the Senate committee in its report) (emphasis added); *accord id.* at 3 (Committee recommends passage of 1933 Act so that "the purposes of the act of June 7, 1924 may be fulfilled and the troublesome question of land titles and right of possession to such lands and appurtenant water rights may be finally disposed of without protracted delays."). The court of appeals below properly relied on the 1933 amendments to section 4 of the Pueblo Lands Act to determine Congress's intent.

In sum, a review of the decision by the court below demonstrates that the court's approach did not conflict

with the governing precedents. The court below reviewed the language of the Act, its structure, and its object and policy, as well as its legislative history and the 1933 amendments to the Act, to determine that Congress manifested an intention to bar both the United States and Pueblo from asserting this action. This method of analysis is consistent with the precedents of this Court regarding the application of statutes of limitations to the United States.

Much of petitioners' argument is not directed to showing that the decision below conflicts with precedents of this Court, but rather to show that the decision of the court below was incorrect. In so doing, the petitioners rehash the arguments that were made to, and rejected by, the court below. As this Court has emphasized, the fact that a case may have been incorrectly decided is not by itself a sufficient reason for this Court to grant certiorari. *See Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974). In any event, the court below was correct in rejecting these arguments.

To appreciate the correctness of the court's holding, it is necessary to recall how the Act operated. Both the Attorney General and the Secretary of the Interior were members of the Pueblo Lands Board. A unanimous decision of the Board was required in order for the Board to determine that a pueblo's title to land was extinguished. If the members of the Board did not conclude unanimously that a pueblo's title was extinguished, then the Board reported the title as "not extinguished," and the Attorney General included the land in the quiet title action brought pursuant to section 3 of the Act.

The interaction between section 2 and section 3 of the Act provided the United States with the opportunity to assert any claim to land within the exterior boundaries of the pueblo grants that it desired to assert. Both the Attorney General and the Secretary of the Interior, the only officials of the United States who would have the authority to assert such a claim on behalf of the United

States, were members of the Pueblo Lands Board. Their judgment regarding the validity of a pueblo's title was embodied in the Board's section 2 report. If either of them was of the opinion that a pueblo's title was not extinguished, then the section 2 report would have stated that the pueblo's title was not extinguished, and the land would have been included by the Attorney General in the quiet title action filed pursuant to section 3 of the Act. If both the Attorney General and the Secretary of the Interior concluded that a pueblo's title was extinguished, and the third member of the Board agreed, then that conclusion would also have been stated in the Board's section 2 report. Permitting the Attorney General, on behalf of the United States, to maintain a suit asserting title to pueblo land despite a determination by the Board that a pueblo's title was extinguished would allow the Attorney General to contradict his own prior determination and that of the Secretary of the Interior. There is nothing in the Act to indicate that Congress intended to permit the Attorney General to overrule himself in this fashion. The only suits by the United States authorized by the Act were suits under section 3 to quiet title to lands for which pueblo title was found not to have been extinguished.[11]

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[11] The force of this argument is not diminished by the fact that the Attorney General and the Secretary of the Interior performed their function as members of the Board through subordinate officials. It is well understood that such officials perform their functions through subordinates. The orders empowering the offices of the Secretary of the Interior and the Attorney General clearly contemplate and encourage such delegation. *See* 28 U.S.C. §§ 504-07 (1988) (appointments of personnel to assist Attorney General); Exec. Order No. 10250, 16 Fed. Reg. 5385 (1951), *reprinted in* 3 U.S.C. § 301 (1988) (Secretary of the Interior); Exec. Order No. 10950, 26 Fed. Reg. 5787 (1961), *reprinted in* 3 U.S.C. § 301 (1988) (Secretary of the Interior). This Court also clearly expects these officials to act through their subordinates and expects the actions of such subordinates to have the same effect as personal action by the official. *See, e.g., Kimm v. Rosenberg*, 363 U.S. 405, 408 (1960); *Jay v. Boyd*, 351 U.S. 345, 351 n.8 (1956); *Miller v. Mayor, Alderman, and Commonality of New York*, 109 U.S. 385, 394 (1883).

Because the Act operated in this way, it is both unnecessary and illogical to permit the United States to bring a claim once a pueblo is barred by section 4 from asserting it. Permitting the United States to assert such a claim in effect allows subsequent administrations, and subsequent Attorneys General, to second-guess the decisions made by their predecessors. Congress did not intend the Pueblo Lands Act to allow this type of Monday-morning quarterbacking, particularly when it occurs more than 50 years after the game was played.[12] The Attorney General and the Secretary of the Interior had the opportunity to call the play in 1927, and they determined that the Pueblo's title was extinguished. Their successors may not replay the game now by asserting that the Board's 1927 decision was flawed.

For the same reason, the argument that the failure to file a plat and field notes pursuant to section 13 of the

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[12] Because the United States determined that the Pueblo's title to the overlap land was extinguished, the United States did not name respondents' predecessors in title as defendants in the quiet title action filed in 1928 pursuant to section 3 of the Act. Nevertheless, the same considerations that led this Court to invoke res judicata to bar an action by the United States against non-party water users in *Nevada v. United States*, 463 U.S. 110, 143-44 (1983) apply to this case as well. Here, as in *Nevada*, an in personam equitable quiet title action was viewed as a "comprehensive adjudication of . . . rights intended to settle once and for all the question" of entitlement to the property rights at issue. *See id.* at 143. Here, as in *Nevada*, "Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change." *Id.* at 129 n.10 (quoting Minnesota Co. v. National Co., 70 U.S. (3 Wall.) 332 (1865)); *see Arizona v. California*, 460 U.S. 605, 620 (1983) ("Our reports are replete with reaffirmations that questions affecting titles to land, once decided, should no longer be considered open."); *United States v. Title Insurance & Trust Co.*, 265 U.S. 472, 485-86 (1924). If the United States thought the Pueblo was entitled to the land at issue in this case in 1928 when the *Montoya* case was filed, it could have—and should have—sued to recover the land then.

Act somehow preserves this claim is fatally flawed. *See* U.S. Pet. at 16. As was just discussed, the Secretary of the Interior was a member of the Pueblo Lands Board, and thus responsible for determining whether a pueblo's title was extinguished. Because the Act required the Board's determination of extinguishment to be unanimous, the Secretary necessarily had joined in any such determination. Consequently, there was no reason—and nothing in the Act to suggest—that Congress intended section 13 to give the Secretary a second, unilateral, opportunity to reverse a determination of extinguishment in which he had already joined. Indeed, allowing the Secretary to do so would produce serious difficulties in implementing the Act. The section 3 quiet title action, intended to include all the land as to which a pueblo's title was unextinguished, would probably have been completed, or at the very least substantially advanced, before the time for filing a plat under section 13 had passed.[13] Consequently, the section 3 quiet title suit would be completed before it became apparent that the Secretary was unilaterally "reversing" the Board by refusing to file the section 13 plat, and it would be too late to include the additional land in the section 3 suit. Similarly, other duties of the Board, such as preparing the reports required by sections 6 and 7 of the Act, could have been completed before it became known that the Secretary was "reversing" the Board. It was precisely these sorts of considerations that made it clear to the court below that Congress intended the United States, as well as the Pueblo, to be barred from asserting claims once the section 4 limitations period had run.

Perhaps the most powerful illustration of the mischief that could arise under the United States' interpretation of section 13—and why Congress did not intend section

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[13] This was certainly true with respect to the Pueblo of Santo Domingo, where the final decree in the *Montoya* case was entered on April 25, 1929, less than two years after the Board filed its section 2 report on December 29, 1927. *Compare* 4 Gov't C.A. App., Tab E-7 *with id.*, Tab E-1.

13 to permit the Secretary to reverse the Board's finding of extinguishment unilaterally—is this very lawsuit. Under the United States' interpretation of section 13, the United States could simply fail to file the plat and then delay for decades, doing nothing, while title to the Pueblo's land remained unresolved.[14] If there is anything that the Pueblo Lands Act teaches, it is that Congress did not intend to allow such claims to fester—Congress intended that these claims be resolved during the time the Act was being implemented. It is inconceivable that Congress created in section 13 an escape hatch allowing the United States to postpone the resolution of such a claim for 60 years.

Faced with this overwhelming evidence that the Board determined that the Pueblo's title to the land at issue in this case was extinguished, that the United States deliberately chose not to claim the land in the section 3 quiet title action, and that the Act was intended to resolve claims of title to land within the boundaries of the Pueblo grants, the court of appeals correctly concluded that this action was barred.

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[14] There is no evidence to suggest that the Secretary failed to file the plat in the 1930's because he disagreed with the Board's determination. In a comprehensive report entitled, "Pueblo of Santo Domingo Land Status," issued by the United States Department of the Interior in 1940, the Department stated:

> The [Pueblo of Santo Domingo] grant, as set forth by the Joy survey, was in conflict with the La Majada, Sitio de Juana Lopez, and Mesita de Juana Lopez grants. Including the conflicts, it contained approximately 92,000 acres. The Pueblo Lands Board, in adjudicating the overlaps, ruled against the Pueblo, and thereby reduced the gross area of the grant to 65,931.20 acres.

U.S. Department of the Interior, Pueblo of Santo Domingo Land Status (April 1, 1940) at 23, 4 Gov't C.A. App., Tab G-1. This Department of the Interior report belies the contention that the Secretary refused to file the plat because he disagreed with the Board's determination. The interpretation of section 13 advanced by the United States in its petition is a recently developed argument devised to avoid the consequences of the actions taken by the United States in the 1920's and 1930's.

B. The Decision Below Does Not Conflict With Cases Holding that the United States Sues in Its Own Right When It Sues on Behalf of Indian Tribes.

Petitioners also argue that the decision below conflicts with decisions of this Court standing generally for the proposition that when the United States sues to enforce Indian rights, it sues in its own right as sovereign as well as a trustee on behalf of its Indian ward. *See* U.S. Pet. at 14-15; Pueblo Pet. at 11-13. Again, petitioners are mistaken. The court of appeals below did not question this general principle, and had no need to. Instead, the court's holding is limited to the context of the Pueblo Lands Act as it applies to this case. In that unique context, for the reasons already discussed above, the court below concluded that Congress intended to preclude the United States from asserting this type of claim on behalf of a pueblo when the pueblo itself was barred.[15]

None of the cases cited by petitioners involves the issue presented by this case, in which Congress enacted a statute specifically intended to resolve a particular type of Indian claim, containing an elaborate procedure designed to address the claims and a statute of limitations clearly intended to bar such claims when the limitations period had run. Rather, the cases cited by petitioners involve situations in which generally applicable doctrines of limitations or repose, such as sovereign immunity or res judicata, precluded suit by an individual Indian or tribe

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[15] The United States is also precluded from asserting this claim in its own capacity by the language of the Act of January 28, 1879, the act by which Congress confirmed the Mesita de Juana Lopez grant. After confirming the Mesita de Juana Lopez grant, the act provided: "That the foregoing confirmation shall only be construed as a quit claim or relinquishment of all title or claim on the part of the United States in and to said Private Land Claim, and shall not affect the adverse rights of any person or persons to the same." Act of January 28, 1879, ch. 31, 20 Stat. 592. While this language preserved the "adverse rights" of third persons, including the Pueblo, to the land encompassed by the grant, it prevents the United States from making any claim to the land in its own right.

and were alleged to bar suit by the United States on behalf of the Indian as well. *See United States v. Hellard*, 322 U.S. 363, 364 (1944) (action allegedly barred where Congress authorized state courts to exercise jurisdiction over cases involving Indians provided that the United States was made a party to the proceeding); *United States v. Minnesota*, 270 U.S. 181, 195 (1926) (action allegedly barred by a state's sovereign immunity); *Privett v. United States*, 256 U.S. 201, 204 (1921) (action allegedly barred by res judicata based on a court proceeding to which the United States was not a party).

This is equally true of the decision in *United States v. Candelaria*, 271 U.S. 432 (1926), an action that did involve a pueblo, but in a situation quite unlike the one presented by this case. *Candelaria* involved a quiet title action brought by a pueblo in 1910, prior to the Pueblo Lands Act. The United States was not involved in the action, and the pueblo litigated the action and lost. When the United States brought a subsequent action on behalf of the pueblo in 1922, the defendants interposed a res judicata defense, based on the pueblo's prior action. This Court determined that the United States could maintain its action despite the pueblo's prior suit.

This case is much different from *Candelaria* because of the impact of the Pueblo Lands Act. Respondents have already discussed the structure of the Act, showing how the United States, through the Pueblo Lands Board, determined that the Pueblo's title to the land at issue was extinguished, and how the United States, through the Attorney General, reaffirmed the Board's ruling in the complaint filed in the quiet title action mandated by section 3 of the Act. Respondents have also discussed the materials demonstrating that Congress intended both the United States and the Pueblo to be barred from asserting this type of action after the expiration of the limitations period established by section 4 of the Act. These factors distinguish the case at bar from *Candelaria*.

Indeed, the case that most closely parallels the case at bar is not *Candelaria*, but *United States v. Title Insurance & Trust Co.*, 265 U.S. 472 (1924). That decision held that the United States was precluded from asserting a land claim on behalf of the Tejon Indians of California because the tribe had failed to present its claim within the time period established by the Act of March 3, 1851, ch. 41, 9 Stat. 631. The Court had previously held that the procedure established by the 1851 Act applied to Indian tribes. *See Barker v. Harvey*, 181 U.S. 481 (1901). The 1851 Act did not expressly state that the United States was barred from bringing suit on behalf of a tribe that had failed to present its claim within the specified time, yet the Court reaffirmed its prior holding in *Barker v. Harvey* and determined that Congress intended an action filed by the United States on behalf of an Indian tribe to be barred. 265 U.S. at 485-86.

In the context of the Pueblo Lands Act, the court below's holding is both reasonable and correct. In light of Congress's intent that litigation regarding pueblo title was to be "forever ended" by the Pueblo Lands Act, the court below properly concluded that once a pueblo was barred by section 4, the United States was not able to assert title in its own right to land for which the Board had ruled the pueblo's title was extinguished.[16]

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[16] When Congress passed the Pueblo Lands Act, it was concerned not only with suits by a pueblo to eject non-Indian landowners, but with suits brought by the United States. This Court quoted testimony by R.E. Twitchell, Special Assistant to the Attorney General, before a congressional committee reviewing the legislation that became the Pueblo Lands Act in which Twitchell emphasized: "The fact that the United States may . . . at any time in the future take steps to oust persons in possession of lands within these Pueblo grants, and the continuing uncertainty as to title, has cast a cloud on all lands held by white people within the Pueblo areas. . . ." *See Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 243 n.15 (1985) (quoting Hearings on S. 3865 and S. 4223 before the Subcommittee Considering Bills Relative to the Pueblo Indian Lands

II. THE DECISION BELOW DOES NOT PRESENT A QUESTION OF FEDERAL LAW DESERVING THE COURT'S ATTENTION.

A. The Precise Issue Presented by this Case Is Unlikely to Recur.

Petitioners' next contention is that the decision below presents an important question of federal law deserving this Court's attention. The issue presented by this case, however, is a narrow one—whether section 4 of the Pueblo Lands Act bars the United States as well as a pueblo from asserting an untimely claim to land when the Pueblo Lands Board has ruled that the pueblo's title to that land is extinguished. There appear to be few, if any, circumstances in which this issue can arise in future litigation. First, the Pueblo Lands Act applied only to the pueblos of New Mexico—20 in number. *See Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240 n.5 (1985). Secondly, the Pueblo Lands Board apparently ruled that pueblo title was not extinguished in overlaps involving other pueblos, making it unlikely that the ruling below will be relevant to claims on behalf of other pueblos.[17] Thus it appears likely that the decision below is relevant only to claims on behalf of the Pueblo of Santo Domingo, and even there it is uncertain whether the Pueblo has any such additional claims.[18] Therefore,

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of the Senate Committee on Public Lands and Surveys, 67th Cong., 4th Sess. 51 (1923)). An interpretation of the Act that bars this suit by the Pueblo but permits the United States to bring the identical claim would produce exactly the situation the Act was intended to remedy.

[17] Petitioners stated in their pleadings below that in no other instance did the Board rule against a pueblo with respect to a grant overlap. *See* Plaintiffs' Cross Motion for Summary Judgment at 66 n.28.

[18] The Pueblo Lands Board ruled that the Pueblo's title was extinguished with respect to lands overlapped by the La Majada, Sitio de Juana Lopez, and Mesita de Juana Lopez grants. Therefore at most the United States could assert a similar claim on behalf of

the issue presented by this case is unlikely to have any impact beyond a few cases at most, and is not sufficiently important to warrant this Court's attention.

Nor does the public interest favor granting the writ in this case. The United States is seeking to escape the consequences of a decision that it made 60 years ago when its representatives, in the exercise of their statutory authority, unanimously determined that the Pueblo's title to the land at issue was extinguished. Other responsible officials of the United States, including the Secretary of the Interior, accepted that determination as correct. Now the present officials of the United States have concluded that their predecessors erred. Assuming for the sake of argument that the United States did err when it extinguished the Pueblo's title in the 1920's, the appropriate remedy for that error is not to dispossess innocent private landowners who have acted in reliance on a decision that has gone unchallenged for decades. Instead, the appropriate relief is for the United States to compensate the Pueblo for the breach of fiduciary duty by the United States. This is precisely the relief available through the Indian Claims Commission in a proceeding brought against the United States, whose representatives committed the error challenged in this case. The Pueblo commenced such a proceeding, *see Pueblo of Santo Domingo v. United States*, Dkt 355 (Ind. Cl. Comm.), 4 Gov't C.A. App., Tab G-2, and included in that proceeding a claim for compensation as a result of the actions of the United States in connection with the overlap land.[19]

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the Pueblo for the land overlapped by those two grants. The United States purchased the La Majada grant in the 1930's, however, and the grant is now part of the Santa Fe National Forest. *See* Plaintiffs' Joint Memorandum in Reply to Defendants' Opposition to Cross-Motion for Summary Judgment at 77 n.36. Consequently, if the United States believes that the Pueblo is the true owner of the La Majada grant, it can simply hold title to that grant in trust for the Pueblo.

[19] Ironically, in a filing before the Indian Claims Commission, the United States maintained that there was "no question" that the

Subsequently, however, the Pueblo requested the Indian Claims Commission, and its successor, the U.S. Claims Court, to defer any ruling on its claim, presumably to preclude respondents from invoking a defense to the present suit based on the resolution of that action. *See United States v. Dann*, 470 U.S. 39 (1985) (tribe barred from claiming title to land after final award by Indian Claims Commission); *Western Shoshone National Council v. Molini*, 951 F.2d 200 (9th Cir. 1991) (same). The Indian Claims Commission remedy—not the present action—remains the remedy that best accords with the public interest.

B. This Case Does Not Present An Appropriate Opportunity to Consider the Issues Raised By the Pueblo.

Perhaps recognizing that the issue presented by this case is not sufficiently important to justify the Court's attention, the Pueblo has identified two broad questions "of great importance in the field of Indian law" and urges the Court to use this case as an opportunity to address these broad questions. *See* Pueblo Pet. at 10. While the Pueblo has certainly succeeded in identifying broad questions, the Pueblo has not adequately explained why these issues need to be addressed at this particular time or why this litigation is particularly appropriate as a vehicle for addressing these issues. Contrary to the Pueblo's contention, these issues do not need to be addressed, and in any event this case does not present a suitable opportunity to address them.

First, the Pueblo would have the Court use this case as an opportunity "to consider the role of the United States as trustee of Indian rights." The concept of the United States as guardian or trustee of Indian rights is

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Pueblo Lands Board had jurisdiction to extinguish the Pueblo's title to the land overlapped by the Mesita de Juana Lopez Grant. *Pueblo of Santo Domingo v. United States*, Dkt 355 (Ind. Cl. Comm.), Response of United States to Plaintiff's Motion for Summary Judgment (filed Aug. 24, 1976) at 9, 4 Gov't C.A. App., Tab G-3.

well established in federal law and has been ever since Chief Justice Marshall in his landmark opinion in *Cherokee Nation v. Georgia* analogized the relationship of Indian tribes to the United States as that of a ward to its guardian. *See Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17-18 (1831). Numerous decisions of this Court in the ensuing 160 years have considered the role of the United States as trustee of Indian rights. *See, e.g., Nevada v. United States*, 463 U.S. 110, 142 (1983) (analysis of duty of United States to Indian tribe and other duties imposed on United States by Congress); *United States v. Mitchell*, 463 U.S. 206, 225-26 (1983) (analysis of general trust relationship between United States and Indians and fiduciary duty imposed on United States by General Allotment Act); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (analysis of trust obligations imposed on United States when carrying out obligations contained in Indian treaties). There is no need for the Court to replow that ground now.

Even if there were a need for this Court to address once more the relationship between the United States and Indian tribes, this case does not present a suitable opportunity to explore "the role of the United States as trustee of Indian tribes." The Pueblo Lands Act established a unique procedure to resolve a particular situation regarding pueblo land titles brought about by this Court's ruling that pueblo members were not Indians within the meaning of federal law. Consequently, any attempt to explore the trustee relationship in the context of the Act will inevitably depend on the particular provisions of the Act—provisions that have no applicability elsewhere.

Second, the Pueblo urges the Court to grant certiorari to address the role of canons of statutory construction in cases involving questions of Indian law. *See* Pueblo Pet. at 14. Again, the Pueblo has not explained why this issue needs to be addressed at this time. Numerous decisions of this Court have discussed when canons of statutory construction favoring Indians should be applied, *see, e.g.*,

County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, —— U.S. ——, 60 U.S.L.W. 4067, 4072 (U.S. Jan. 14, 1992); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985); *Starr v. Long Jim*, 227 U.S. 613, 622-23 (1913), and when they should not. *See, e.g., Amoco Production Co. v. Gambell*, 480 U.S. 531, 555 (1987) (canons of construction do not permit courts to disregard congressional intent); *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986) (same); *Oregon Dept. of Fish and Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 774 (1985) (same); *Rice v. Rehner*, 463 U.S. 713, 732-33 (1983) (same); *Andrus v. Glover Construction Co.*, 446 U.S. 608, 618-19 (1980) (same). There is no need for the Court to address this issue at this time.

In any event, this case does not present a suitable opportunity to review the canons of statutory construction applicable to Indian law issues. The court below determined that Congress clearly manifested its intention that this suit by the United States and the Pueblo be barred. As the cases just cited make clear, the canons of construction favoring Indians do not permit courts to disregard congressional intent.

III. CONTRARY TO THE PUEBLO'S CONTENTION, THE DECISION BELOW DID NOT EXTINGUISH THE PUEBLO'S TITLE.

The Pueblo's final argument is that the decision below "might have extinguished" the Pueblo's title to the land claimed in this lawsuit. *See* Pueblo Pet. at 14-15. This argument is patently wrong. Courts interpret law in order to adjudicate disputes; they do not themselves extinguish Indian title. The court below simply held that the Pueblo's claim was barred by the Pueblo Lands Act. The real point of the Pueblo's argument appears to be that the decision below is incorrect. As respondents have already discussed, this is not a sufficient reason for this Court to grant review, and in any event the decision below was correct.

The Pueblo Lands Act, by establishing the Pueblo Lands Board to determine the status of pueblo titles to land, by authorizing the United States to bring quiet title actions with respect to pueblo land, and by authorizing the pueblos themselves to bring suit to adjudicate their titles to land but limiting the time during which such suits could be brought, created a comprehensive structure to resolve the status of pueblo titles to land within the exterior boundaries of the pueblo grants. Section 2 of the Act gave the Board the authority to determine that a pueblo's title to land within the boundaries of a pueblo's grant was extinguished. Once the Board made its determination, the Pueblo then was obligated by section 4 of the Act to assert a timely challenge to the Board's determination in order to avoid the statutory bar. The failure to do so precludes both the United States and the Pueblo from bringing this suit.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,

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